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Human rights and transnational corporations and other business enterprises

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, submitted pursuant to Human Rights Council resolutions 17/4 and 26/22.

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Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises

Summary

The present report explores how national action plans on business and human rights may be employed to implement the Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework and so strengthen efforts to prevent and protect against business-related human rights abuses. The report starts by outlining the purpose and value of national action plans. It then assesses some of the key elements concerning: (a) the process of developing national action plans; (b) the content of national action plans, including their form and substance; and (c) the implementation and continuous review of national action plans. The report further outlines some of the key challenges ahead. It ends with a set of conclusions and recommendations addressing States, business enterprises and organizations and civil society.

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I. Introduction

1. Since their endorsement by the Human Rights Council in 2011 (resolution 17/4), the Guiding Principles on Business and Human Rights have spurred action by States, non-governmental organizations (NGOs) and business enterprises across the globe. However, there is an urgent need to accelerate and scale up implementation of the Guiding Principles to strengthen legal and policy frameworks to prevent and protect against human rights abuses by business enterprises.

2. The Working Group considers that national action plans can be an important means to accelerate implementation of the Guiding Principles. The fundamental purpose of a national action plan is to prevent and strengthen protection against human rights abuses by business enterprises through an inclusive process of identifying needs and gaps and practical and actionable policy measures and goals.

3. Several States have already developed, or are in the process of developing, a national action plan on business and human rights.[1] Those developments are taking place alongside discussions on national action plans that are ongoing in countries around the globe, including at the annual Forum on Business and Human Rights and the regional forums convened by the Working Group.[2]

4. In parallel, civil society organizations, academics and national human rights institutions have provided guidance on the development of national action plans and analysed the ongoing processes. In 2012, the European Group of National Human Rights Institutions published a discussion paper containing general guidance on the process of creating a national action plan and its content.[3] The Danish Institute for Human Rights and the International Corporate Accountability Roundtable, have developed a toolkit together.[4] Finally, academic researchers have begun to provide comparative analyses of the process of creating a national action plan and its content.[5]

5. The present report draws lessons from a range of consultations on national action plans convened by the Working Group, including an open consultation and expert workshop held in Geneva in February and May 2014, an online consultation on the substantive elements to be included in a national action plan and a

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[1] As of 1 July 2014, four Governments have launched their national action plans: the United Kingdom of Great Britain and Northern Ireland (September 2013), the Netherlands (December 2013), Italy (March 2014) and Denmark (April 2014). Other Governments are at various stages of the process, including, but not necessarily limited to, Argentina, Belgium, Colombia, Finland, France, Ghana, Germany, Greece, Ireland, Portugal, Morocco, Norway, Slovenia, Spain and Switzerland. See the Working Group's repository on national action plans, available from www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx.

[2] See www.ohchr.org/EN/Issues/Business/Forum/Pages/ForumonBusinessandHumanRights.aspx.

[3] Available from nhri.ohchr.org/EN/Themes/BusinessHR/Documents/EU%20NHRIs%20Paper%20on%20National%20Implementation%20Plans%20for%20UNGPs%20210612%20SHORT.docx.

[4] Available from accountabilityroundtable.org/wp-content/uploads/2014/06/DIHR-ICAR-National-Action-Plans-NAPs-Report3.pdf. The Working Group actively engaged with the process of consultations undertaken by the two organizations.

[5] See, for example, Andreas Graf, "Developing national action plans on business and human rights", (Bern, Swiss Peace Foundation, 2013), available from www.swisspeace.ch/fileadmin/user_upload/Media/Publications/Essentials/Essential_4_2013.pdf.

questionnaire sent to States.[6] It aims to provide a set of evidence-based observations on the key process and substantive elements of national action plans on business and human rights. It also seeks to encourage States, civil society organizations and business enterprises to engage with the Working Group in its efforts to develop more specific guidance on such plans.

II. Definition and value of national action plans

6. The Working Group understands that national action plans are evolving policy strategies developed by States to prevent and protect against human rights abuses by business enterprises in conformity with the Guiding Principles on Business and Human Rights. In national action plans, States take stock of what they are already doing to implement the Guiding Principles and identify gaps which require further policy action to implement the Guiding Principles. They can take the form of a stand-alone plan or be integrated into related broader strategies, such as those on human rights or corporate social responsibility.

7. Evidence from ongoing processes suggests that national action plans can make a qualitative contribution to the effective implementation of the Guiding Principles. In this regard, it is particularly notable that national action plans can be a tool for:

(a) Coordinated and coherent implementation of the Guiding Principles in a way that accommodates all three pillars of the Principles and involves all relevant governmental and non-governmental stakeholders;

(b) A comprehensive assessment of needs and gaps that translate into practical goals to spur action and increase public accountability;

(c) Organic implementation of the Guiding Principles in a way that is sufficiently flexible to respond to the range of business and human rights problems that a country may face and reflect the diversity of regulatory environments;

(d) Raising awareness of, and providing an opportunity for, a constructive multi-stakeholder dialogue on applicable human rights standards and the three pillars of the Guiding Principles;

(e) The mobilization of resources, including through international cooperation and technical support, to improve national policy, legal and regulatory frameworks to prevent and protect against human rights abuses;

(f) Helping to level the international playing field regarding policy, legal and regulatory frameworks on business and human rights.

[6] For an overview of the consultations, the road map prepared by the Working Group to support the development of national action plans and the expert workshop, see www.ohchr.org/EN/Issues/Business/Pages/ImplementationGP.aspx and the forthcoming outcome documents from the seventh and eighth sessions of the Working Group.

III. Observations on the process of developing a national action plan

8. The Working Group notes that consensus is emerging with regard to four basic process elements that are critical to the development of national action plans: (a) the process should be based on the coordinated involvement of all relevant governmental stakeholders and be led by a dedicated entity within the Government with the necessary organizational capacity, political authority and resources; (b) the process should be evidence-based and therefore include an analysis of existing practices and remaining gaps, although there are different views as to how extensive such gap analyses need to be; (c) non-governmental stakeholders should be able to participate in the process in a meaningful way; and (d) the process should be transparent and predictable for all stakeholders.

A. Involvement of relevant governmental stakeholders and leadership

9. The coherent and comprehensive implementation of the Guiding Principles requires the active involvement of a variety of different government ministries, departments and agencies. To ensure their meaningful engagement, a format for cross-ministerial, departmental and agency cooperation should be established early in the process.

10. That cooperation is necessary for three reasons. First, it fosters a common understanding across Government of the issues at stake. Many ministries, departments and agencies contribute to the implementation of the Guiding Principles but do not directly refer to human rights. Cooperation between them can ensure that a common language is developed. Second, implementation of the Guiding Principles by various State ministries, departments and agencies requires substantial technical knowledge. National action plans can only address regulatory and policy shortcomings if the people with the relevant expertise are part of the process. Third, such cooperation fosters ownership among the various governmental stakeholders. As those ministries, departments and agencies will ultimately be in charge of implementing the action points identified in the national action plan, their involvement is crucial for the its effectiveness.

11. Most Governments have addressed this issue by creating broad-based interministerial working groups in charge of developing the national action plan. Relevant governmental actors include, but are not limited to, the ministries in charge of human rights, foreign affairs, economic, business and trade issues, justice, labour and development.

12. Evidence from ongoing national action plan processes demonstrates the importance of dedicated leadership. In its report to the twenty-third session of the Human Rights Council (A/HRC/23/32, para. 71), the Working Group recommended that Governments should designate overall responsibility for implementing the Guiding Principles to a relevant ministry or department. To date, some Governments, such as the Netherlands, Spain and the United Kingdom of Great Britain and Northern Ireland, have allocated the leadership role to human rights-related entities within the Ministry of Foreign Affairs or, in the case of Denmark and Finland, government entities that focus on business or trade issues. Other national

action plan processes, such as those in Norway and Switzerland, are led by entities that focus jointly on human rights and business.

13. The experience of ongoing processes points to challenges in marrying together dedicated leadership and ownership of national action plans through cross-Government cooperation. In order to move the process forward, leading ministries, departments or agencies may run the risk of taking over much of the work of developing the national action plan, leaving less dedicated members of the cross-departmental working groups on the sidelines. Governments have successfully tried to limit this risk by ensuring that there is joint leadership drawn from different ministries, departments and agencies and/or a clear division of labour, including sharing the workload.

B. Inclusion of non-governmental stakeholders

14. Reflecting the spirit of the Guiding Principles, the process of developing a national action plan should be inclusive, ensuring that the voices of all relevant stakeholders, including that of victims of human rights abuses, are heard and accounted for. Consulting a broad range of non-governmental stakeholders is an essential part of the development of a national action plan. Relevant non-governmental stakeholders include national human rights institutions, civil society organizations, business enterprises, business and professional associations, trade unions and academia. Different national contexts will inform the identification of stakeholders, including the predominance of certain sectors in the economy or the prevalence of sectors that are considered to pose a greater risk to human rights.

15. Participation in the conduct of public affairs, including access to the necessary information, is itself a human right that must be respected and implemented in the formulation of national action plans, as in all other spheres of government action. In addition, evidence from national action plan processes suggests that the inclusion of non-governmental stakeholders yields a number of benefits. First, implementing the Guiding Principles cannot be done by the State alone. Most State measures require buy-in from the business sector. Giving business enterprises a voice in the process of identifying adequate State measures is crucial. Second, non-governmental stakeholders have a high level of knowledge of the kinds of problems that are to be addressed and potential ways to tackle them, which has proven to complement the government perspective in a useful way. Furthermore, consultations with stakeholders are a way for Governments to communicate their expectations and strategies to all those actors whose activities and interests are affected by the national action plan.

16. States have chosen various ways to engage non-governmental stakeholders. In all national action plan processes, stakeholders have been invited to voice their positions and expectations before the Government started drafting the document. Most States have organized a series of consultation meetings, some separately for each stakeholder group and others in the form of joint sessions.[7] Other States conduct regular exchanges with standing multi-stakeholder advisory groups on the

[7] See for instance the outline of the Spanish process (in Spanish), available from www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx.

issue of corporate social responsibility.[8] Moreover, some Governments have mandated external experts to conduct in-depth interview processes with stakeholders.[9] In addition to consulting stakeholders prior to drafting the document, some States have also held consultations on the drafts of their national action plans, mostly by asking for written feedback from a limited number of non-governmental stakeholders.[10]

17. Feedback from non-governmental stakeholders suggests that meaningful consultation is central to the legitimacy of the process. A number of those stakeholders consider the approach in which an external expert conducts interviews with them as an effective way to allow for the most detailed inclusion of their positions. The same holds good for the consultation on draft versions of the national action plan. That additional round of consultation has often been requested by stakeholders in countries, such as Finland, Spain and Switzerland, in order to ensure important modifications are made to the national action plan before it is finalized. Doing so also helps to shape the expectations of all relevant parties before the launch of the plan.

18. National human rights institutions play a particularly important role among non-governmental stakeholders and the process of developing a national action plan can serve to strengthen further the mandate of such institutions in the area of business and human rights. National human rights institutions have been actively involved in promoting the implementation of the Guiding Principles, both at a national and at a regional level. In 2012, the European Group of national Human Rights Institutions adopted the Berlin action plan on business and human rights[11] urging national human rights institutions in the region to support the implementation of the Guiding Principles by, inter alia, undertaking baseline studies with reference to the Guiding Principles and/or making recommendations for national action plans. Some national human rights institutions have been active in following those recommendations and have played a central role in establishing dialogue between the various stakeholders at a national and international level and by promoting capacity-building within civil society and the business community. For instance, the Commission on Human Rights and Administrative Justice in Ghana is taking a lead on convening a multi-stakeholder dialogue on business and human rights, with a view to supporting the development of a national action plan in 2015.

19. Some States have considered it helpful to consult international actors such as regional and international organizations, including the Working Group, international civil society organizations or international experts.[12] In several cases, that has helped to promote policy coherence between States through the sharing of different government experiences in developing a national action plan.

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[8] See, for example, the Consultative Body for Human Rights and Norwegian Economic Involvement Abroad or the Danish Council for Corporate Responsibility.

[9] See for instance the national action plan of the Netherlands (p. 3), or the report on the stakeholder consultation in Switzerland (in German), http://www.swisspeace.ch/fileadmin/user_upload/Media/Publications/Schlussbericht_StakeholderkonsultationenNAP.pdf.

[10] See for instance the draft national action plan of Finland (in Finnish), or the draft national action plan of Spain (in Spanish), available from www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx.

[11] See business-humanrights.org/media/plan-of-action-plan-bhr-workshop-0912-berlin.doc.

[12] For example, the Government of the United Kingdom organized a conference at Wilton Park in June 2012 as part of its pre-drafting consultations.

C. Mappings, baseline studies and gap analyses

20. In developing national action plans, Governments should adopt an evidence-based approach, gathering data and assessing what may be required to align existing laws, regulation and policies with the Guiding Principles. That implies taking steps to ascertain the existing baseline position and identifying the remaining gaps in existing frameworks to ensure proper alignment with the Guiding Principles. To be consistent with the Guiding Principles, any review of the status quo should extend not only to identifying existing policy, laws and regulations but also to assessing the effectiveness of a policy and the practicalities of enforcement within the legal, regulatory and adjudicative frameworks. Baseline studies should cover all three pillars of the Guiding Principles.

21. Conducting a thorough initial gap analysis on all three pillars of the Principles is important for at least three reasons. First, it allows for the identification of the issues of concern that are specific to the country and thereby lays the baseline for the drafting of a national action plan that addresses the relevant issues. Second, the identification of gaps helps to locate responsibility and leadership roles for different government entities and ascertain if there are policy instruments that may be appropriate for responding to the gaps identified. Third, baseline studies can be a benchmark against which progress in implementing the national action plan can be measured over time.

22. Governments have chosen two different ways to analyse the status quo and identify gaps: (a) conducting internal mapping exercises and (b) commissioning analyses by external experts. Internal mapping exercises have been done by most of the countries that have so far developed national action plans. In essence, all members of the cross-departmental working groups have outlined their activities and potential gaps in relation to implementing the Guiding Principles, which have then been merged into one single document. Those involved in developing the national action plan consider those steps and the discussions that they trigger very beneficial in fostering a common understanding of the Guiding Principles themselves, as well as identifying the issues to address in the national action plan and increasing meaningful engagement of the various governmental actors involved.

23. While internal mappings are crucial for fostering cross-governmental cooperation and buy-in, they tend to be limited in terms of objectivity. That is why various Governments have commissioned external experts to conduct baseline studies.[13] Most of those studies have primarily addressed the legal frameworks of the countries concerned. Nevertheless, first examples of more comprehensive baseline studies[14] and guidance on the respective methodologies have been developed in recent months.[4] National human rights institutions in several countries have played a very valuable role in conducting baseline studies. Given their unique

[13] See, for example, Scuola Superiore Sant'Anna, "Imprese e diritti umani: il caso Italia" (2013); Commission nationale consultative des droits de l'homme, "Entreprises et droits de l'homme: avis sur les enjeux de l'application par la France des Principes directeurs des Nations unies" (2013); and Swiss Centre of Expertise in Human Rights and University of Zurich Centre for Human Rights Studies, "Human rights implementation in Switzerland: a baseline study on the business and human rights situation in Switzerland" (2014).

[14] See, for example, Mark B. Taylor, "A mapping analysis: the State duty to protect" (2013), which is a summary of a broader study conducted for the Norwegian national action plan.

position, they could be invited to contribute in a much more strategic way to baseline assessments.

24. The achievement of a comprehensive baseline study and gap analysis, complemented by internal mappings, is likely to pose considerable logistical and practical challenges and in every case will require resources and careful planning. While it seems preferable to conduct a thorough analysis before drafting a national action plan, Governments may choose a different approach. For example, they may include detailed analyses of some issues as part of the action points defined in the national action plan, thereby deferring their response until after the national action plan has been launched. That is the approach followed by some countries which have already published their national action plans.[15]

D. Transparency and predictability

25. Drawing on one of the key success factors of the process that led to the endorsement of the Guiding Principles, the process of developing of national action plans should be transparent and predictable for all stakeholders. That means that the relevant documents should be made publicly available and accessible. Moreover, the process should be clearly and publicly outlined at the beginning and updated accordingly.

26. Transparency and predictability are fundamental elements in the legitimacy of the process of developing national action plans because they foster trust among governmental and non-governmental stakeholders. Evidence shows that stakeholders are prepared to contribute to the process by investing significant time and resources if they believe that their input will be taken seriously. Similarly, the sharing of documents and the characteristics of the process is a precondition for a joint learning process among stakeholders at the national and international level.

27. A number of Governments that have launched or are developing a national action plan have taken steps to ensure transparency and predictability in the process. In most cases, mapping exercises, baseline studies and/or reports on stakeholder consultations have been published. However, issues of transparency have been a recurring criticism of non-governmental stakeholders in most countries. While there are no obvious reasons not to keep stakeholders informed about the development process and the next steps, Governments might at times need to strike a balance between transparency regarding documents and the efficiency of the process. Experience suggests that opting for transparency rather than rapid completion of the process pays off in the long run because doing so strengthens multi-stakeholder support for the process and its outcome.

IV. Observations on the content

28. This section includes reflections on the substantive and presentational issues of national action plans and on how they can take different forms. It highlights some core underlying principles concerning the scope and content of national action

[15] See, for example, the commitment in the Dutch national action plan to appoint an independent committee (p. 14), or the action outlined on page 11 of the United Kingdom national action plan.

plans, and sketches out illustrative policy themes that may be considered for each of the three pillars of the Guiding Principles.

A. Stand-alone documents or parts of other strategies

29. In evolving policy strategies to implement the Guiding Principles, Governments may see fit to develop a stand-alone document dedicated to business and human rights, or include chapters in broader government strategies or action plans, for example on human rights, corporate social responsibility or national development. The Working Group does not offer set advice on the best option, as long as the national action plan seeks to implement the Guiding Principles in a comprehensive and coherent manner and is the result of a process characterized by the elements defined in this report.

30. As of July 2014, the national action plans so far published have taken the form of separate documents and most of the countries that are currently developing their national action plan are following a similar approach. Some countries have also referenced the Guiding Principles in strategies on human rights or corporate social responsibility.[16] Other countries, such as Colombia, Greece and Portugal, are addressing the implementation of the Guiding Principles in broader government strategies in which they plan to dedicate a separate chapter to their national action plan.

31. In any case, Governments should ensure coherence with other national government strategies. In this vein, the Working Group has emphasized the importance of expressly referring to the Guiding Principles in government policies on corporate social responsibility to help ensure that those policies target the potentially negative impacts of business activities and thus avoid the reduction of the concept of corporate social responsibility to only a philanthropic endeavour (see A/HRC/23/32/Add.2, para. 16).

B. Underlying principles of the substance of national action plans

32. The Working Group considers the following five underlying principles as key to a robust national action plan. A national action plan should: (a) mirror the complementarity and interrelatedness of State duties and corporate responsibilities under the Guiding Principles; (b) sketch out a "smart mix" of measures tailored to national circumstances; (c) strengthen vertical and horizontal coherence; (d) contribute towards a level international playing field; and (e) be underpinned by human rights principles and integrate a gender perspective, as well as consider effectively issues of vulnerability and/or marginalization.

[16] See, for example, the Danish action plan for corporate social responsibility 2012-2015, available from csrgov.dk/file/318420/uk_responsible_growth_2012.pdf; or the Cypriot national action plan for corporate social responsibility, available from www.foretica.org/plan_rse_chipre.pdf.

1. Complementarity and interrelatedness of State duties and corporate responsibilities

33. National action plans should reflect the Guiding Principles as a coherent whole[17] with three complementary and interrelated pillars. While national action plans as public policy strategies should in the first instance provide answers as to how the State plans to implement its human rights obligations, they should also outline ways in which corporations will implement their responsibility to respect human rights. As a consequence, national action plans have significant implications for the implementation of the second and third pillars of the Guiding Principles by business enterprises. They may, for instance, outline the ways in which States expect business enterprises to discharge their responsibilities under the second and third pillars. They may also identify policy instruments through which States choose to support, incentivize and require business enterprises to meet their responsibilities.

34. In this regard, it is important to underline that a national action plan does not in any way reduce the responsibility of business enterprises to respect human rights, which exist independently of the ability and/or willingness of States to fulfil their own human rights obligations.[18] Rather, a national action plan, developed though an inclusive multi-stakeholder process, should serve further to encourage companies to proactively implement the Guiding Principles.

2. Tailoring to national circumstances with a "smart mix" of measures

35. The Working Group encourages Governments to hold comprehensive discussions on potential policy instruments and define a "smart mix" of measures to foster respect for human rights. The Working Group understands by the term "smart mix", on the one hand, that all possible measures — national and international, mandatory and voluntary — are taken into consideration.[19] On the other hand, the combined measures should be "smart" in the sense that they effectively prevent and address the adverse human rights impacts of business enterprises.

36. While there are certain policy areas that are relevant to all States in the implementation of the Guiding Principles, the content of national action plans must necessarily be specific to each State. For example, countries that host many multinational business enterprises will be expected to focus on a different set of questions and measures to countries that are home to those business enterprises. Similarly, if specific sectors are of particular importance to the economy of a country, this may lead to additional emphasis on those sectors.

3. Vertical and horizontal coherence

37. The Guiding Principles require States to ensure coherence in both a vertical and horizontal sense.[20] National action plans are an ideal vehicle to this end. Vertically, national action plans should comprehensively consider policy, legislation, regulation and adjudication and they should identify the most effective measures for addressing existing gaps in the implementation of the obligations of States under international human rights law.

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[17] See Guiding Principles, general principles.

[18] See Guiding Principle 11 and its commentary.

[19] See also the commentary to Guiding Principle 3.

[20] See Guiding Principle 8 and its commentary.

38. Horizontally, State entities and sub-State agencies that influence corporate conduct should possess the relevant knowledge of the duties of the State concerning business and human rights and be able to implement their mandates accordingly. Awareness-raising and capacity-building should be a priority, to ensure the coherent implementation of the Guiding Principles by all government actors.

39. The Working Group strongly encourages States to promote the concept and application of human rights due diligence. In their national action plans, Governments should state the expectations they have that business enterprises will carry out human rights due diligence in line with the second pillar of the Guiding Principles. Furthermore, States should include and elaborate on the established understanding of human rights due diligence when taking more proactive steps, such as developing guidance; defining the terms of human rights conditionality in public procurement or when export credit agencies are involved; outlining the specificities of reporting requirements; or considering the inclusion of human rights elements in corporate law.

4. Raising the bar and levelling the international playing field

40. Governments should take the international context into consideration and strive to foster an international level playing field on business and human rights. In doing so, they should try to diminish the regulatory discrepancies between different States to the benefit of regulations that are considered the most effective in protecting individuals and societies from adverse corporate human rights impacts. In this regard, States should give effect to Guiding Principle 10 and ensure that multilateral institutions draw on the Guiding Principles to promote business respect for human rights.

5. Issues of gender and groups particularly vulnerable to abuse

41. National action plans must be underpinned by the core human rights principles of non-discrimination and equality, participation and inclusion, accountability and the rule of law. For example, particular attention should be given to the issue of gender and its intersection with groups particularly vulnerable to human rights abuse, such as children, migrant workers and their families, indigenous peoples, persons with disabilities, ethnic minorities and human rights defenders. That is especially true for certain groups that are particularly vulnerable to adverse human rights impacts and that also struggle to obtain access to effective remedy. A national action plan should ensure that any such individuals or groups do not suffer twice because of their gender or marginalization.

42. The importance of integrating a gender perspective, in both the procedural and substantive dimensions of a national action plan, deserves specific mention. The gender perspective should inform the composition of the governmental coordinating group, the mapping and gap analysis and multi-stakeholder consultations. In the latter instance, it is especially important that the voice of women is specifically and expressly sought in communities where the prevailing culture is dominated by men. Similarly, a robust national action plan should deal proactively with the impact on women of issues concerning investment, procurement and access to remedy.

C. Specific measures and policy instruments to consider in national action plans

43. The Working Group encourages Governments to consider including in their national action plan measures in the areas of policy, legislation, regulation and adjudication.[21] What follows is a non-exhaustive outline of measures and policy themes that may be considered in drawing up national action plans, along the lines of to the three pillars of the Guiding Principles.

1. Pillar I: Law, regulation and policy

44. State duties under the first pillar may be set out in terms of: (a) duties with regards to business enterprises owned or controlled by the State, including those that are linked formally or informally to the State; and (b) duties with regard to private sector businesses. As regards the former, Governments should ensure that business enterprises that are owned or controlled by, or linked to, the State implement the second and third pillars of the Guiding Principles in an exemplary manner. That will include measures to implement adequate human rights due diligence processes and provide business-level grievance mechanisms. In their national action plans, Governments should lead by example in those instances where they are directly responsible. Moreover, national action plans could include steps through which States can ensure the effective oversight of the activities of business enterprises that are owned or controlled by, or linked to, the State.

45. There are four broad measures that should be taken vis-à-vis the private sector. First, States should clarify and communicate expectations. In addition, they should create measures that encourage, incentivize and require business enterprises to implement their responsibilities under the second and third pillars.

46. First, Governments should use a national action plan to outline their expectations of business enterprises. Those expectations should also be reflected in other areas identified in the plan to ensure a coherent policy regarding business and human rights. Furthermore, national action plans should include measures to disseminate widely those expectations among national and international stakeholders. The Working Group encourages Governments to collaborate with business associations and networks, such as the Global Compact Local Network, and to use their convening power to engage with business leaders at the highest levels. National action plans could also support and encourage capacity-building efforts conducted by academic institutions, professional bodies and those seeking to support them to integrate human rights into their curricula or standards. That would help to embed human rights further into the business community.

47. Second, States should create measures to support implementation of the Guiding Principles by businesses. For example, national action plans should explain the ways in which the State implements, or plans to implement, Guiding Principle 3 (c) to "provide effective guidance to business enterprises on how to respect human rights throughout their operations". In addition, States may consider providing written guidance for business enterprises regarding specific sectors, types of business enterprises (such as small and medium-sized enterprises), issues (such as supply chain management), contexts (such as conflict-affected areas) or aspects of

[21] See Guiding Principle 1.

human rights due diligence (such as human rights impact assessments or reporting). Governments should note that a multitude of guidelines already exist.[22] In many cases, simply translating the existing guidelines into the language(s) of the country concerned may already be beneficial to local business enterprises. Furthermore, Governments may consider it helpful to publish templates to help business enterprises bring their corporate social responsibility and human rights policies into line with the Guiding Principles.

48. Online resources may also help business enterprises understand and implement their responsibilities under the second pillar. For example, States may consider developing tools to facilitate risk analysis by geographical region and sector. Moreover, online access to relevant legislative and regulatory provisions and related guidance (grouped by theme or sector) may help to ensure that business enterprises know what is expected of them.

49. In their national action plans, Governments should also outline the ways in which they can offer advice to business enterprises. In that regard, several countries have taken steps to ensure that civil servants, including their overseas diplomatic personnel, are in a position to give helpful advice to business enterprises on procedural and context-specific human rights issues.[23] Additionally, Governments may consider setting up specific help desks to provide business enterprises with relevant information about country-specific requirements.[24] Moreover, national human rights institutions and Global Compact Local Networks can play an important role in advising business enterprises on human rights issues. All of those potential measures underline the importance of capacity-building within the civil service.

50. Support measures are of particular relevance with regard to conflict-affected areas, where the risk of adverse human rights impacts is particularly high.[25] In their national action plans, Governments may identify steps to support business enterprises while integrating guidance on conflict-sensitive business practices[26] into their human rights due diligence processes. Moreover, States should consider developing early-warning mechanisms to alert government agencies and business enterprises to problematic developments and escalation in a conflict.

51. Third, States should take steps to incentivize business enterprises to respect human rights. In this regard, the Working Group considers it of particular importance that national action plans highlight the way in which States are taking

[22] See, for example, http://business-humanrights.org/ToolsGuidancePortal/Home.

[23] See for example the toolkit provided by the Government of the United Kingdom on how overseas missions can promote good conduct by British companies, available from www.gov.uk/government/uploads/system/uploads/attachment_data/file/35451/business-toolkit.pdf.

[24] The International Labour Organization helpdesk for business on international labour standards might be a source of inspiration in this regard. See www.ilo.org/empent/areas/business-helpdesk/lang--en/index.htm.

[25] See Guiding Principle 7.

[26] See e.g., the due diligence guidance of the Organization for Economic Cooperation and Development for responsible supply chains of minerals from conflict-affected and high-risk areas, available from www.oecd.org/investment/mne/GuidanceEdition2.pdf; or the International Alert guidance on conflict-sensitive business practices for the extractive industries, available from www.international-alert.org/sites/default/files/Economy_2005_CSBPGuidanceForExtractives_All_EN_v2013.pdf.

human rights into account in their public procurement processes and in the activities of export credit agencies.

52. In relation to public procurement, States have the opportunity to incentivize business enterprises by, for example, making the award and renewal of procurement contracts conditional on the human rights record of a business enterprise and its ongoing measures for respect for human rights. That should be an integral part of the bidding process. Suppliers may, for example, be required to perform human rights due diligence or a relevant risk analysis to show that they are implementing their responsibilities under the Guiding Principles.

53. States should also examine whether current legislation and policies make sufficiently clear and explicit how the duty of the State to protect human rights is to be operationalized by public authorities in the course of procurement activities. Requirements should be fully integrated into general guidance materials on public procurement and into the criteria for awarding contracts. In addition, adequate monitoring and accountability mechanisms should be put in place. States may also consider identifying, where appropriate, risk management measures in relation to high-, medium- and low-risk purchase categories, addressing each stage of the procurement process.[27]

54. Similarly, in their national action plans, Governments should include steps to ensure that projects with adverse human rights impacts do not benefit from support from export credit agencies. That may include requesting human rights impact assessments of applicants and making support conditional upon implementing mitigation measures and monitoring of human rights impacts during the project phase. In defining those policies, States may wish to refer to the recommendation of the Council of the Organization for Economic Cooperation and Development (OECD) common approaches for officially supported export credits and environmental and social due diligence on this issue.[28] Governments should also consider outlining adequate procedures to oversee the human rights due diligence efforts of export credit agencies.

55. A further approach to incentivizing business enterprises to respect human rights is the development and support of multi-stakeholder initiatives[29] aligned to the Guiding Principles. While mostly non-coercive in nature, such initiatives can create substantive market pressure on business enterprises to comply with human rights standards. In their national action plans, States should discuss ways in which they can support the integration of the Guiding Principles into existing multi-stakeholder initiative and make them more effective in preventing and mitigating human rights abuses. Another opportunity for States to incentivize businesses is to link public procurement or export credit policies to the commitment

[27] On the issue of procurement and human rights, see for instance the work on procurement done by the International Corporate Accountability Roundtable, available from accountability roundtable.org/initiatives/procurement/, or the report published by the Northern Ireland Human Rights Commission, available from www.nihrc.org/documents/NIHRC%20Public%20Procurement%20and%20Human%20Rights.pdf.

[28] Available from www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=tad/ecg%282012%295&doclanguage=en.

[29] Examples include but are in no way limited to the Global Compact, the Kimberley Process, the Extractive Industries Transparency Initiative, the Voluntary Principles on Security and Human Rights or the International Code of Conduct for Private Security Service Providers.

to, or participation in, a relevant multi-stakeholder initiative by business enterprises. Furthermore, States may identify sectors or issues where they consider the initiation of a new such initiative to be beneficial to the enjoyment of human rights.[30]

56. In addition, States may wish to affirm national legal standards concerning business and human rights in their national action plans. Drawing on Guiding Principles 3 (a), (b), (d) and 9, the Working Group encourages Governments to consider at least four kinds of legally binding measures when identifying the "smart mix" that should characterize their approach to business and human rights. These are (a) laws on the domestic implementation of labour standards; (b) legal requirements to report on human rights due diligence; (c) the duties of business enterprise management related to human rights; and (d) economic agreements concluded by States with other States or business enterprises.

57. Governments should use national action plans to identify steps to improve the domestic implementation of international labour standards, such as those enshrined in the Declaration on Fundamental Principles and Rights at Work of the International Labour Organization (ILO). The specific issue areas where action is required may vary from country to country. For some States, the priorities may be eliminating forced or compulsory labour and the abolition of child labour. Others may choose to focus on workplace safety and/or labour trafficking.

58. In relation to human rights reporting requirements, the Working Group has noted a positive trend towards the introduction of legal provisions and other policies aimed at increasing transparency and thus incentivizing activity that respects human rights. An increasing number of countries are requiring large companies to report on non-financial issues. In this respect, the Working Group welcomes the European Parliament directive on disclosure of non-financial and diversity information by certain large companies and groups, adopted on 15 April 2014. It encourages member States of the European Union to ensure in their national legislation that companies effectively report on "policies, risks and results" regarding respect for human rights by referring to human rights due diligence, such as is outlined in Guiding Principles 17 to 21, and asks other States to follow suit.

59. Furthermore, Governments have increasingly asked companies to report human rights issues when they are active in regions of heightened risk and/or involved in business activities with potentially grave human rights implication. For example, the Government of the United States of America has enacted reporting requirements on business enterprises active in Myanmar, on companies with links to certain minerals from the Democratic Republic of the Congo or neighbouring countries and on payments to Governments by resource-extractive business enterprises.[31] Another example is the disclosure requirement of the European Union for companies sourcing timber from primary forests. The Working Group encourages Governments to explore further how these kinds of approaches can increase corporate respect for human rights and take steps to strengthen reporting

[30] For instance, while many existing multi-stakeholder initiatives focus on the extraction of natural resources, the Government of Switzerland is currently in the process of developing an initiative on the trade in natural resources.

[31] Dodd Frank Wall Street Reform and Consumer Protection Act, sections 1502 and 1504. For further material, see the relevant sections at the Business and Human Rights Resource Centre, available from www.business-humanrights.org.

requirements concerning business operations that pose a particular risk to human rights.

60. In general, Governments should clarify their expectations of business enterprises with regard to existing and new reporting requirements. For example, States may choose to reference established standards such as the fourth generation of the Global Reporting Initiative. That approach to reporting based on the Global Reporting Initiative standard, or regional standards, can help level the playing field on reporting requirements. At the same time, Governments should take into consideration the limited capacity of small and medium-sized enterprises when detailing reporting requirements.

61. In some countries, civil society organizations and some politicians have started to push Governments to extend the duty of care of company directors to include human rights. The Working Group encourages Governments to consider the option of domestic legislation with extraterritorial effect, where possible, when drafting national action plans. The Working Group has identified significant hesitations on the part of Governments regarding such measures in corporate law, owing to fears of negatively affecting the international competitiveness of business enterprises domiciled on their territory. States which are home to a significant number of multinational business enterprises may therefore want to address the issue in multilateral forums such as OECD.

62. The Working Group also encourages Governments to review the human rights implications of existing laws and policies in areas such as agreements on trade and investment and mechanisms for investment arbitration. States should ensure that economic agreements concluded with other States or with business enterprises, such as bilateral investment treaties, free-trade agreements or contracts for investment projects, do not limit the domestic policy space of Governments to fully implement their human rights obligations in line with the Guiding Principles. Possible measures include the standardized inclusion of a human rights clause in these agreements to ensure that they foster rather than hinder the protection of affected communities. Moreover, States should consider ex-ante and ex-post human rights impact assessments of such agreements and act upon the findings (see, for example, A/HRC/19/59/Add.5).

2. Pillar II: Corporate responsibility and national action plans

63. It is important to underline that the corporate responsibility to respect human rights exists independently of, and over and above, compliance with national laws and regulations protecting human rights. In other words, irrespective of the human rights treaties to which a State is a signatory, the business responsibility to respect human rights refers to the entire spectrum of internationally recognized human rights, as contained in the International Bill of Human Rights and the principles concerning fundamental rights set out in the Declaration on Fundamental Principles and Rights at Work.[32]

64. National action plans should, therefore, address the potentially harmful impacts on all human rights, which any business enterprise, regardless of its size, sector, operational context, ownership or structure, causes, or contributes to, through

[32] See Guiding Principle 12 and its commentary.

its own activities or those that are directly linked to its operations, products or services.[33]

65. Concerning the processes that a business enterprise is expected to follow in order to "know and show" that it respects human rights, the Guiding Principles outline the concept of human rights due diligence. According to Guiding Principle 17, the process should include "assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed." Whilst States should refer to human rights due diligence in a consistent way when defining their policies to implement the Guiding Principles, they should also take into account that, according to Guiding Principle 14, the expected scale and complexity of the due diligence processes of business enterprises may vary according to their size, sector, operational complexity, ownership and structure, and the severity of their adverse human rights impacts.

66. National action plans can help shape business respect for human rights in two important ways. First, they have the potential to provide clarity to business enterprises on what States expect and require from them vis-à-vis human rights. While the general terms of those expectations are captured in the Guiding Principles, national action plans give additional and more specific meaning to those provisions in the national context and are likely to enhance the coherence of State policies and regulations. For example, national action plans can be a vehicle to examine which domestic laws and rules are needed in order for companies to meet their responsibility to respect human rights effectively. Related to this, national action plans have the potential to reduce incoherent approaches by different States. That is of importance especially to multinational business enterprises, which currently face a patchwork of different and partly contradictory, regulatory and policy frameworks across the countries in which they operate.

67. Second, it is important that Governments cooperate with business enterprises in implementing the various measures outlined in their national action plans. For example, States may rely on business associations to disseminate national action plans and their expectations regarding business and human rights. Business enterprises could be asked to share experiences and best practices when States develop support services. Moreover, they may be invited to develop jointly or become part of multi-stakeholder initiatives. While national action plans are principally about State implementation of the Guiding Principles, companies have a crucial role to play in the development of a national action plan and in its implementation.

3. Pillar III: State-based and non-State-based grievance mechanisms

68. The Working Group stresses the need to put particular emphasis on the third pillar of the Guiding Principles in national action plans. States should clarify, develop and strengthen the often weak and inconsistent accountability measures and mechanisms available in each country. While a fully integrated and comprehensive regime for the effective redress of adverse corporate-related human rights impacts will take time to emerge, States should make policy adjustments to address impunity as a matter of priority. That includes setting out the resources, venues and remedies available to victims and what further measures will be taken to allow for or support

[33] See Guiding Principle 13.

access to remedy through three different kinds of mechanisms: State-based judicial mechanisms, State-based non-judicial grievance mechanisms or non-State-based mechanisms.[34]

69. Concerning State-based judicial mechanisms, Governments should as a first step work to reduce legal, practical or other barriers to accessing remedy regarding abuses occurring within their territory and/or jurisdiction. That may include clarifying the opportunities for legal remedy to potential victims, building the capacity of judicial personnel, or strengthening the independence of the judiciary.

70. At the same time, Governments should also use national action plans to clarify and explore the application of extraterritorial jurisdiction in situations where victims face denial of justice in the country where the alleged abuse occurred.[35] Beyond clarifying the existing legal framework, Governments should address legal barriers, such as the legal liability of parent companies for the involvement of a subsidiary in a human rights abuse, or more practical issues such as the resource and expertise of State prosecutors, or a victim's access to legal assistance.

71. In line with Guiding Principle 27, in their national action plans, States should also consider ways of granting access to remedy through non-judicial grievance mechanisms. In this regard, the potential role of other institutions, such as ombudspersons or national human rights institutions, in providing access to remedy should be further explored. Moreover, national contact points under the OECD Guidelines for Multinational Enterprises can also play an important role. Governments should consider establishing a national contact point if they have not yet done so. States with an existing national contact point should carefully review the extent to which its resources and mandate allow for effective remedy to victims.

72. Finally, States should also consider ways to facilitate access to effective non-State-based grievance mechanisms.[36] In this regard, national action plans may foresee measures to support business enterprises or industry associations in developing and operating adequate mechanisms. Those mechanisms might be internal to companies or be externalized. In either case, the potential role of stakeholders, such as civil society groups, in such mechanisms should be further explored. Governments may consider steps to strengthen the grievance mechanisms of multi-stakeholder initiatives which they support or of which they are members.[37] As outlined in the Guiding Principles, such mechanisms should be legitimate, accessible, predictable, equitable, transparent and rights-compatible, as well as a source of continuous learning and based on engagement and dialogue.[38]

V. Observations on implementation and review

73. The Working Group notes a broad recognition that developing national action plans should not be a one-off exercise, but a continuous process. In order to ensure the legitimacy and effectiveness of that process over time, States should therefore

[34] See Guiding Principles 26-28.
[35] See Guiding Principle 2 and its commentary.
[36] See Guiding Principle 28.
[37] One example is the oversight mechanism of the International Code of Conduct for Private Security Service Providers, available from www.icoc-psp.org.
[38] See Guiding Principle 31.

consider outlining the way in which they plan to implement their national action plans. They might, for example, highlight the government agencies responsible for implementing each of the measures defined in the plans. Governments may also consider attaching clear objectives, time frames and indicators to guide the implementation of the various measures.

74. Further, States are encouraged to outline processes and mechanisms to oversee implementation of their national action plans. The implementing government entities should be invited to report on a regular basis on the progress regarding the various measures. Governments may also consider designating specific authorities, including national human rights institutions or ad hoc multi-stakeholder committees, to review such reports and make recommendations on the actions needed to further implement national action plans.

75. In order to ensure the continuity of the process, States may also outline a time frame for a revision of their national action plans. The revision of the plan should reflect developments in the business environment and/or emerging human rights risks and build on progress made in the implementation of the previous plan. That process should be informed by the same criteria as the process to develop a first national action plan: broad-based government engagement, an analytical approach, multi-stakeholder participation and transparency and predictability.

VI. Challenges ahead

76. The Working Group considers national action plans a very useful vehicle for States to continuously improve the protection of individuals from corporate-related human rights abuses. Looking ahead and taking into consideration existing national action plans and the status of their development globally, the Working Group has identified three important focus areas in this regard: (a) identifying and sharing best practices; (b) further broadening the uptake of national action plans globally, with a particular emphasis on the global South; and (c) integrating discussions on further normative development at the international level.

A. Identifying and sharing of best practices

77. With emerging experience in the development of national action plans, it is crucial that best practices are identified and shared among stakeholders. The present report represents an effort to assemble some of the emerging lessons with regard to process, content and the implementation of national action plans, and encourage international discussion on the development of national action plans. It will add to other initiatives taken by civil society organizations or academic scholars, who have tried to gather information on previous experiences and propose guidance to Governments engaging in the process of developing national action plans.[39]

78. The Working Group is in the process of developing guidance on national action plans. A draft version will be launched at the Annual Forum on Business and Human Rights in Geneva in December 2014. The guidance will provide support to

[39] For an overview, see the relevant page at business-humanrights.org/en/un-guiding-principles/implementation-tools-examples/implementation-by-governments/by-type-of-initiative/national-action-plans.

States in the development of national action plans through the sharing between stakeholders of a common understanding and experience. It will also provide an opportunity for the Working Group to reflect further on emerging evidence of good practice in the implementation of the Guiding Principles.

79. The Working Group encourages stakeholders to engage further in these discussions and share their experiences with the Working Group and among each other. Some States have started to support actively the development of national action plans in other countries, for instance by cooperating on the organization of events, as well as via direct engagement with government officials on specific issues.[40] The Working Group is committed to fostering those exchanges by providing a platform for exchange and contributing to discussions when it is invited.

B. Broadening the global uptake

80. An increasing number of Governments are considering developing national action plans or are facing demands by civil society groups to do so. It will require a concerted effort by stakeholders to emphasize the benefits of developing a national action plan and broaden their global uptake. In that process, the Working Group counts on the support of regional organizations, national human rights institutions, NGOs and international business associations.

81. One key challenge to address in this regard is to understand better the specific circumstances defining the development of national action plans in countries of the global South. The perspective of the global South has many points in common with that of the global North, but there may be differences regarding the issues, sectors and regulatory framework that should be examined and prioritized. For example, it may be important to give special consideration to the particular challenges that occur in conflict zones and States in transition, as well as to the disproportionate impact that corporate-related human rights abuses may have on women and vulnerable and/or marginalized groups. In addition, it may be important to emphasize public and private security accountability, protecting and respecting labour rights and environmental and natural resource rights, including land acquisition and tenure and property rights.

82. While countries in the global North face the same challenges, mostly as home States of multinational business enterprises, those issues can affect countries in the global South in a much more direct way and they require a different set of measures to be taken by States. As a consequence, States with developing economies may consider incorporating business and human rights into existing "national development plans", with the government planning agency coordinating the effort and with close monitoring and support from NGOs and national human rights institutions. That can promote responsible inward investment and encourage early respect for human rights from businesses, which in turn can provide a platform for broader human rights protections within the State.

83. The Working Group will examine those challenges at its second regional forum to be held in September 2014 in Addis Ababa. It is committed to exploring such questions further in the future.

[40] See for instance the collaboration between the Governments of the United Kingdom and Colombia mentioned in the United Kingdom national action plan (p. 11).

C. Integrating discussions on normative development at the international level

84. In recent months, debates among both governmental and non-governmental stakeholders on further normative development at the international level have gained in intensity.[41] At the twenty-fourth session of the Human Rights Council, Ecuador read a statement on behalf of a number of Governments, and supported by a coalition of NGOs, in which they called for a "legally binding framework to regulate business enterprises and to provide appropriate protection, justice and remedy to the victims of human rights abuses".[42] That call was reiterated at the twenty-sixth session of the Council in June 2014, during which the Council decided to establish an open-ended intergovernmental working group on a legally binding instrument on transnational corporations and other business enterprises with respect to human rights (Council resolution 26/9).

85. The Working Group welcomes the common viewpoint of States that any efforts to strengthen international standards should build upon and be complementary to the framework set out in the Guiding Principles. It is in this spirit that the Working Group looks forward to contributing to any open deliberations on new international standards, including the ones to be developed by the newly established intergovernmental working group. Any recommendation on this topic from the Working Group will be based on clear and verifiable evidence, while noting that the final decision on further normative development at the international level, including a binding instrument, is one to be taken by States under the auspices of the Human Rights Council. In the view of the Working Group, such a decision should seek to build on the lessons learned and progress made under the United Nations protect, respect and remedy policy framework and the Guiding Principles on Business and Human Rights.

86. Given the many open questions regarding the scope, content, and feasibility of a legally binding treaty on business and human rights, the Working Group expects the process of moving towards a legally binding treaty on business and human rights to be lengthy. At the same time, the Working Group recognizes that the calls for further normative development are grounded in sincere impatience at continuing adverse corporate-related human rights impacts and weaknesses, as well as gaps in existing remedy mechanisms, which means they fail to respond fully to those adverse impacts. The Working Group shares that impatience and emphasizes that the new intergovernmental process does not in any way reduce the need for all States and business enterprises to scale up their efforts to implement their duties and responsibilities under the Guiding Principles.

87. As the present report shows, the development of national action plans in accordance with the Guiding Principles is a very important step in this direction. The Working Group will continue to focus on national action plans as an instrument to respond to shortcomings at the national level. It also believes that information from the various national action plans projects can be collated, analysed and added to the body of evidence that relates to enhancing access to remedy at the international level. Furthermore, intergovernmental deliberations on a future

[41] For an overview, see www.business-humanrights.org/Documents/Legally_Binding_Instrument_Business_Human_Rights.

[42] See: business-humanrights.org/media/documents/statement-unhrc-legally-binding.pdf.

international legal instrument will in all likelihood underline the importance of national action plans as practical and action-oriented strategies to prevent and protect against business-related human rights abuse.

88. The Working Group will continue to pay particular attention to the pressing need to ensure access to effective remedy. Part of its mandate is "to explore options and make recommendations at the national, regional and international levels for enhancing access to effective remedies available to those whose human rights are affected by corporate activities, including those in conflict areas" (Human Rights Council resolution 17/4, para. 6 (e)). In particular, at its twenty-sixth session, the Human Rights Council asked the Working Group to collaborate with the Office of the United Nations High Commissioner for Human Rights to facilitate the sharing and exploration of the full range of legal options and practical measures to improve access to remedy for victims of business-related human rights abuses, and invited the Working Group to include as an item on the agenda of the Forum on Business and Human Rights the issue of access to remedy, judicial and non-judicial, for victims of business-related human rights abuses, in order to foster mutual understanding and greater consensus among different viewpoints (Council resolution 26/22).

VII. Conclusions and recommendations

89. **Much work remains to be done to ensure more effective implementation of international human rights standards as they apply to business-related human rights abuses.**

90. **The endorsement of the Guiding Principles by the Human Rights Council in 2011 spurred a number of initiatives by States, NGOs and business enterprises across the world. However, there is much more to be done to ensure concrete action on issues of business and human rights, including the use of national action plans as a vehicle to implement the Guiding Principles.**

91. **National action plans should serve to raise awareness of the business and human rights agenda and move it forward. As new ground is being covered, the development of such plans will be an iterative process, for which the sharing of experience among all stakeholders will be particularly important. Through the present report and its ongoing work to provide guidance on national action plans, the Working Group aims to promote and facilitate such mutual learning.**

92. **The Working Group encourages States:**

(a) **To initiate inclusive multi-stakeholder processes for the development of national action plans and to share experiences in that regard;**

(b) **To engage with the Woking Group in its efforts to develop guidance on such plans, including by responding to the questionnaire distributed in April 2014;**

(c) **To give attention to the process and substantive elements reviewed in the present report, bearing in mind the fundamental human rights principles which should underpin a national action plan;**

(d) **To place concern for the victims of human rights abuses at the heart of national action plans, paying particular attention to women and groups that**

are particularly vulnerable to corporate-related human rights abuses, including children, indigenous peoples, migrant workers and their families, persons with disabilities, ethnic minorities and human rights defenders;

(e) To explore how a gender perspective can be effectively integrated throughout the process;

(f) To give priority to identifying and remedying gaps and shortcomings concerning access to effective remedy.

93. **Non-governmental organizations and community groups are encouraged:**

(a) To use the Guiding Principles in their advocacy and raise awareness of the human rights obligations of States and the responsibilities of business enterprises;

(b) To advocate for and contribute to the review of needs and gaps which should inform the concrete policy measures and commitments to be set out in national action plans;

(c) To engage in efforts at the national and international levels to identify and remove barriers to effective remedy, including by engaging with the Working Group;

(d) To engage in multi-stakeholder dialogues on business and human rights and national action plans, such as the annual Forum on Business and Human Rights and regional forums convened by the Working Group.

94. **Business enterprises are encouraged:**

(a) To seize the opportunity of the process of developing national action plans to engage with States, NGOs and communities to show their commitment to improving legal, policy and regulatory frameworks to prevent and protect against human rights abuse, in conformity with the Guiding Principles;

(b) To actively engage in the development of national action plans of both their home countries and those of host countries where their businesses operate, with a view to ensuring that national action plans serve to support business enterprises in meeting their human rights responsibilities;

(c) To clarify that national action plans, or any other measures which a State may initiate, are independent from and cannot reduce the global standard of conduct expected of any business enterprise to respect internationally recognized human rights.